Filed 3/13/19 Enjati v. Big Bear Moving, Inc. CA4/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MOHAN ENJATI et al., Plaintiffs and Appellants, v. BIG BEAR MOVING, INC. et al., Defendants and Respondents.	E068332 (Super.Ct.No. CIVDS1408882) OPINION

APPEAL from the Superior Court of San Bernardino County. Bryan Foster, Judge. Affirmed.

Ziprick & Associates, Robert H. Ziprick and Jonathan R. Ziprick, for Plaintiffs and Appellants.

Law Offices of Lawrence R. Bynum, Lawrence R. Bynum for Defendants and Respondents.

After defendants and respondents Big Bear Moving, Inc., Redlands Moving & Storage, Inc., Randall Rogers, James Rogers, and Michelle Rogers prevailed at trial in

this matter, the trial court awarded them attorney fees. Plaintiffs and appellants Mohan Enjati and Aruna David contend that the award of attorney fees was erroneous, arguing that the contract at issue did not specifically provide for attorney fees to be included as recoverable costs, and that, to the extent it allowed recovery, the contract limited the amount of such an award. We affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs brought suit pursuant to a written contract for storage of personal property at a storage facility (the contract), contending that their property had wrongfully been sold at auction.[1] The property at issue had been sold at auction for $1,950. After a bench trial, the trial court found that none of the defendants were liable to either plaintiff.

The parties subsequently stipulated that defendants were entitled to recover costs other than attorney fees in the amount of $1,638.69. Additionally, defendants requested an award of attorney fees of $47,292 pursuant to Civil Code section 1717, contending that the contract on which plaintiffs had brought suit specifically provided for such an award.

Two sections of the contract are relevant to this appeal. Section 3 provides that the "customer agrees to indemnify and save harmless the carrier in the event it is made a party to any litigation by reason of having said property, or any portion thereof transported and/or stored, and to pay cost of court and attorney's fees incurred in connection therewith. The carrier's lien shall secure all such costs and expenses in

[1] Plaintiffs' complaint does not appear in our record, but there is no dispute between the parties about the general nature of the suit.

addition to its transportation and/or storage charges." Section 6 of the contract provides for a general lien for charges on the property, including "for all costs incurred and allowed to be recovered as reasonable expenses under provisions of the California Commercial Code or Civil Code in collecting said charges or enforcing its lien, or defending itself in the event that it is made a party to any litigation concerning said property." Section 6 further provides: "In the event of sale under this paragraph the carrier may retain out of the proceeds thereof an amount sufficient to pay all unpaid charges, plus interest thereon at the legal rate per month charged monthly will be made together with costs incurred in possession and foreclosure, including attorney's fees."

Plaintiffs' counsel failed to attend the hearing on defendants' motion for attorney fees, and the trial court granted the motion in full. Plaintiffs subsequently sought relief pursuant to Code of Civil Procedure section 473 due to the failure to appear and requested the court reconsider its ruling pursuant to Code of Civil Procedure section 1008. The trial court granted plaintiffs' request for relief, accepting plaintiffs' counsel's representation that his failure to appear was a calendaring error. On the merits, the trial court again granted defendants' motion, but reduced the award to $40,642 in attorney fees, which it awarded along with the stipulated $1,683.69 in other costs.

II. DISCUSSION

A. *Applicable Law*

Unless authorized by either statute or contract, attorney fees ordinarily are not recoverable as costs. (Code Civ. Proc., § 1021; *Sessions Payroll Management, Inc. v. Noble Construction Co.* (2000) 84 Cal.App.4th 671, 677.) An award of contractual

attorney fees is governed by Civil Code section 1717, which provides in pertinent part that "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).) The California Supreme Court has interpreted Civil Code section 1717 "to further provide a reciprocal remedy for a nonsignatory defendant, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney's fees should he prevail in enforcing the contractual obligation against the defendant."[2] (*Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 128 (*Reynolds*).)

When, as here, the facts are not in dispute, the right to recover attorney fees depends upon the interpretation of a contract, and no extrinsic evidence is offered to interpret the contract, we review the trial court's ruling de novo. (*Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1161.) "[W]e may affirm a trial court judgment on any [correct] basis presented by the record whether or not relied upon by the trial court." (*Day v. Alta Bates Medical Center* (2002) 98 Cal.App.4th 243, 252, fn.1.)

[2] Neither Aruna David, nor any of the defendants, were signatories to the contract, which was between Mohan Enjati and a nonparty.

B. *Analysis*

Section 3 of the contract specifically provides for an award of attorney fees by the "customer" to the "carrier" in the event the carrier "is made a party to any litigation by reason of having said property, or any portion thereof transported and/or stored." Plaintiffs do not contest that this language, together with the reciprocity provisions codified in Civil Code section 1717 and interpreted in cases like *Reynolds* to apply to nonsignatory defendants sued on a contract, supports the trial court's award of attorney fees to defendants. Rather, plaintiffs argue that we should not consider the language of section 3, and should focus our analysis solely on section 6. We disagree.

Plaintiffs point out that defendants relied solely on section 6 of the contract in the trial court, failing to mention section 3 either in their moving papers or during oral argument. Defendants provided the contract to the trial court, but their first mention of section 3 was in their respondent's brief on appeal. Plaintiffs argue defendants therefore waived the right to argue that the attorney fee award was authorized by section 3. Not so. To be sure, "arguments raised for the first time on appeal are generally deemed forfeited." (*Perez v. Grajales* (2008) 169 Cal.App.4th 580, 591-592.) Nevertheless, "a litigant may raise for the first time on appeal a pure question of law which is presented by undisputed facts." (*Hale v. Morgan* (1978) 22 Cal.3d 388, 394; see also *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 269 ["[W]e will affirm a judgment correct on any legal basis, even if that basis was not invoked by the trial court."]; *Day v. Alta Bates Medical Center*, *supra*, 98 Cal.App.4th at p. 252, fn.1 [similar].)

The case authority cited by plaintiffs, *Planned Protective Services v. Gorton* (1988) 200 Cal.App.3d 1, does not require a different result. In that case, the appellant sought to raise a completely different statute than was argued in the trial court, which arguably would have limited the amount of the fee award imposed against the appellant. (*Id.* at p. 12.) The Court of Appeal declined to consider the argument and potentially reverse the trial court, finding the appellant had "invited the error" by failing to cite the other statute, so that the trial court "was not informed" about it. (*Id.* at p. 13.) The present circumstances are different: plaintiffs ask that we reverse the trial court, even though it correctly looked to the parties' contract as the possible basis for awarding fees, and in fact reached the correct bottom line interpretation of the contract (that it provides for such an award), but its reasoning in reaching that result may have been faulty because defendants failed to point the court to the correct portion of the contract. We do not read *Planned Protective Services* to require, or even support, such a result. "After all, we review the validity of the ruling and not the reasons given." (*B & P Development Corp. v. City of Saratoga* (1986) 185 Cal.App.3d 949, 959.)

Plaintiffs assert that "the only legible writing of Section 3" is defendants' "tardy and self-serving transcription" of it in the respondents' brief in this appeal. Not so. There are two copies of the contract in our record; one was an exhibit to defendants' motion for attorney fees, the other was an exhibit to plaintiffs' opposition to that motion. Both are legible. Moreover, plaintiffs have not argued that defendants' transcription of portions of the contract is incorrect. And, in any case, our analysis of the contract is

based on the copies of the contract in the record, not the language as reported in the parties' briefing.

Plaintiffs also assert they were prejudiced by defendants' failure to raise section 3 in the trial court, arguing that if defendants had done so, plaintiffs' opposition in the trial court and opening brief on appeal would have focused "on the amount of the fees," rather than interpretation of section 6 of the contract. But plaintiffs did challenge the amount of fees requested, both in writing and at oral argument, with some success, in that the amount of fees awarded by the trial court was less than the amount requested by defendants. Plaintiffs have made no attempt to articulate precisely what other arguments they would have liked to raise, or why they could not have raised them before, no matter what defendants contended was the appropriate basis for a fee award. We are not persuaded that plaintiffs suffered any cognizable prejudice from defendants' failure to rely on section 3 of the contract in seeking fees. (See *Shaw v. County of Santa Cruz*, *supra*, 170 Cal.App.4th at p. 269 ["There can be no prejudicial error from erroneous logic or reasoning if the decision itself is correct."].)

Finally, plaintiffs contend that the amount of the fee award should have been no more than $311.31, the difference between the amount received from the sale of their property, $1,950, and the amount of costs to which the parties stipulated, $1,638.69. In plaintiffs' view, section 6 of the contract imposes such a limitation on recoverable costs. We disagree. Section 6 provides for a "general lien upon any and all property," from which costs, including litigation costs such as attorney fees, may be collected. Naturally, the amount recoverable by retaining proceeds from the sale of property pursuant to the

lien is limited by the sale amount. But nothing in section 6 limits costs or fees to the amount of the lien, rather than those reasonably incurred. (Cf. *Reynolds*, *supra*, 25 Cal.3d at p. 127 [promissory notes "provided for recovery of collection costs, including attorney's fees limited to 15 percent of the principal amount of the notes, in the event of default"].)

In short, plaintiffs have demonstrated no error in the trial court's award of attorney fees to defendants. Section 3 of the contract at issue expressly provides for such an award, and nothing in the contract, including section 6, places any specific limitation on the amount of the award.

III. DISPOSITION

The judgment is affirmed. Respondents are awarded costs on appeal.

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RAPHAEL
J.

We concur:

MCKINSTER
Acting P. J.

CODRINGTON
J.